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MEMO ENDORSED*Delivered via ECF Filing*

Honorable Analisa Torres
United States District Judge
U.S. District Court for the Southern District of New York
500 Pearl Street
New York, NY 10007-1312

Re: *City of New York v. Exxon Mobil Corporation, et al.*,
Case No. 1:21-cv-04807-AT

Dear Judge Torres:

We represent Defendants Exxon Mobil Corporation and ExxonMobil Oil Corporation in the above-captioned matter. We write on behalf of all parties to submit the parties' jointly proposed schedule for briefing anticipated motions, including Plaintiff's anticipated Motion to Remand. All parties have consented to the filing of this letter, and join in the request submitted to the Court herein.¹

¹ This submission does not operate as an admission of any factual allegation or legal conclusion and is submitted subject to and without waiver of any right, defense, affirmative defense, claim, or objection, including lack of subject matter jurisdiction, lack of personal jurisdiction, insufficient process, or insufficient service of process. Defendants do not, by agreeing to the procedures herein to have the Court consider and adjudicate the motion to

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*NOT ADMITTED TO THE NEW YORK BAR
**ADMITTED ONLY TO THE CALIFORNIA BAR

On April 22, 2021, Plaintiff, the City of New York, filed a 59-page complaint against Exxon Mobil Corporation, ExxonMobil Oil Corporation, Royal Dutch Shell plc, Shell Oil Company, BP p.l.c., BP America Inc., and American Petroleum Institute (collectively, “Defendants”) in the Supreme Court of the State of New York, County of New York, Case No. 451071/2021. On May 28, 2021, Defendants timely removed this action to this Court. The Notice of Removal is 93 pages, with an additional 1,969 pages of attachments and exhibits.

Plaintiff intends to file a Motion to Remand, which Defendants intend to oppose. Based on the number of issues raised in the Notice of Removal and the number of parties named in this action, the parties have conferred and jointly request an enlargement of time and page limits with respect to briefing related to the Motion to Remand. Based on good-faith discussions among the parties’ counsel, informed by their experience in addressing these issues in similar cases in other courts, the parties respectfully submit that the interests of justice and efficient consideration by this Court can best be achieved by setting a briefing schedule and plan as set forth below. The parties have also conferred and agree that it would serve the interests of judicial efficiency and save time and resources to continue any Case Management Conference, and related deadlines, until a time following this Court’s decision on Plaintiff’s Motion to Remand. No party in this case has previously requested an extension or adjournment. Accordingly, the parties respectfully request the following scheduling modifications:

Requested Page Limits for the Motion to Remand Briefing. With respect to page limits for the Motion to Remand briefing, Plaintiff believes that it needs 45 pages for its opening brief and 25 pages for reply to adequately address the Notice of Removal based on the number of grounds asserted. In the interest of efficiency, Defendants will use their best efforts to submit a consolidated opposition, rather than separate oppositions for each Defendant, and that consolidated opposition shall not exceed 45 pages. If any Defendant deems it necessary to file a separate brief, Defendants propose that such separate brief shall be limited to 10 pages. These proposed page limits are exclusive of exhibits and other attached materials.

Requested Extension of Time for the Motion to Remand Briefing. With respect to the deadlines for the Motion to Remand briefing, the parties propose that Plaintiff’s opening brief shall be filed by July 7, 2021 (*i.e.*, within 40 days after removal), Defendants’ opposition brief(s) shall be filed by August 16, 2021 (*i.e.*, within 40 days of the deadline for the Motion to Remand), and Plaintiff’s reply brief shall be filed by September 6, 2021 (*i.e.*, within 21 days of the deadline for the opposition to the Motion

remand prior to any further proceedings, waive their objections to personal jurisdiction, insufficient process, or insufficient service of process. Plaintiff agrees that it will not assert in federal or state court that there has been any waiver of personal jurisdiction, insufficient process, or insufficient service of process because of the parties’ agreement to have the Court consider and adjudicate the motion to remand prior to the filing of motions to dismiss.

to Remand). The parties respectfully submit that this schedule will afford the parties adequate time to address the grounds for removal contained in Defendants' notice.

Motions to Dismiss. Defendants intend to file threshold motions, including motions to dismiss pursuant to Fed. R. Civ. P. 12, and certain Defendants object to the exercise of personal jurisdiction, and intend to file motions to dismiss pursuant to Fed. R. Civ. P. 12(b)(2), 12(b)(4), and/or 12(b)(5). The parties submit that it would be more efficient for both the Court and the parties if briefing on any motions to dismiss or other responses to the Complaint are deferred until after this Court resolves the Motion to Remand. In the absence of this relief, Defendants' motions to dismiss would be due on Friday, June 4, 2021, which would afford Defendants insufficient time to brief the multiple grounds for dismissal contemplated here.²

If the Court denies Plaintiff's Motion to Remand, the Defendants will file any motions to dismiss within 45 days of an order denying the Motion to Remand. The parties will also promptly meet and confer regarding an appropriate briefing schedule for oppositions and replies and page limits for that briefing and will endeavor to jointly submit a proposal to the Court within seven days of the Court's order denying the Motion to Remand. If the parties are not able to agree on a proposed briefing schedule, they will submit separate proposals to the Court. In the event the anticipated Motion to Remand is granted, the parties have agreed to request the same deadlines from the New York State Supreme Court for briefing any motions to dismiss.

Other Deadlines Held in Abeyance Pending Resolution of the Motion to Remand. Finally, the parties further request that the deadline to serve Rule 26(a) Initial Disclosures and to confer as required under Federal Rule 26(f), and the issuance of a Rule 16(b) Scheduling Order, shall be stayed until after this Court has ruled on the Motion to Remand.

In sum, the parties propose the following schedule for the Court's consideration:

- Plaintiff shall file a brief not to exceed 45 pages (exclusive of exhibits and other attached materials) in support of its Motion to Remand by July 7, 2021.
- Defendants shall file a consolidated brief not to exceed 45 pages (exclusive of exhibits and other attached materials), and any Defendant-specific briefs not to exceed 10 pages (exclusive of exhibits and other attached materials), in opposition to Plaintiff's Motion to Remand by August 16, 2021.

² The parties recognize that the Court may not be able to so order the agreed upon extension of the current deadline to respond to the Complaint, and the parties therefore agree to abide by the terms of this jointly proposed schedule irrespective of whether the Court is able to act before the June 4 deadline.

- Plaintiff shall file a reply brief not to exceed 25 pages (exclusive of exhibits and other attached materials) in further support of its Motion to Remand by September 6, 2021.
- The deadline to move to dismiss, answer, or otherwise respond to the Complaint shall be adjourned pending further order of the Court.
- The deadline to serve Rule 26(a) Initial Disclosures and to confer as required under Federal Rule 26(f), and the issuance of a Rule 16(b) Scheduling Order, shall be stayed until further order of the Court.

The parties are available at the Court's convenience to address the proposed schedule.

Respectfully submitted,

/s/ Theodore V. Wells, Jr.

Theodore V. Wells, Jr.
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*Counsel for Defendants Exxon Mobil Corporation
and ExxonMobil Oil Corporation*

cc (via ECF and email):
All counsel of record

Application GRANTED. Plaintiff's motion to remand, not to exceed 45 pages, is due by **July 7, 2021**. Defendants' opposition, not to exceed 45 pages, is due by **August 16, 2021**. Plaintiff's reply, not to exceed 25 pages, is due by **September 6, 2021**.

Defendants' deadline to answer or move against the complaint is stayed pending resolution of Plaintiff's motion to remand. The deadline to serve Rule 26(a) Initial Disclosures and to confer as required under Federal Rule 26(f), and the issuance of a Rule 16(b) Scheduling Order, shall be stayed until further order of the Court.

SO ORDERED.



6/3/2021

HON. VALERIE CAPRONI
UNITED STATES DISTRICT JUDGE